

MEMORANDUM OF AGREEMENT – PLUM CREEK (SOUTH BAILEY ROAD) GREENWAY

THIS MEMORANDUM OF AGREEMENT – PLUM CREEK (SOUTH BAILEY ROAD) GREENWAY (“Agreement”), is made and entered into this ___ day of _____, 2019, by and between the **TOWN OF CORNELIUS**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter “CORNELIUS”), **TOWN OF DAVIDSON**, a municipal corporation organized under the laws of the State of North Carolina (hereafter “DAVIDSON”) and **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (“COUNTY”, and together with CORNELIUS and/or DAVIDSON, each a “Party” and collectively, “Parties”).

WITNESSETH:

WHEREAS, as part of the adopted comprehensive greenway master plans for (i) COUNTY, (ii) CORNELIUS, and (iii) DAVIDSON, an approximate half-mile greenway, yet to be officially named by the Parties but known herein as the Plum Creek (South Bailey Road) Greenway (the “Greenway”), is planned to connect the existing South Prong Rocky River Greenway (located in Davidson) to the existing multi-use path on Bailey Road in the CORNELIUS;

WHEREAS, the Parties desire by this Agreement to enter into an agreement with respect to the Greenway, which is depicted at Exhibit A attached hereto.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein) and the mutual covenants and conditions hereinafter set forth, the Parties agree for themselves, their successors and assigns, as follows:

1. Term. This term of this Agreement (the “Term”) shall commence on the date set forth above and expire at midnight on June __, 2029, unless terminated earlier pursuant to the terms hereof. At the conclusion of the Term, this Agreement shall automatically renew for successive twelve (12) month periods, unless terminated by either Party upon ninety (90) days’ prior written notice to the other Party. Notwithstanding the foregoing, either party hereto may terminate this Agreement at any time, upon thirty (30) days’ prior written notice to the other party, in the event the noticed party (i) uses the Greenway for any purpose other than a public greenway, or (ii) otherwise defaults in its obligations under this Agreement.
2. Purpose. The purpose of this Agreement is to define the Parties’ rights and obligations with respect to the development, maintenance, operation and use of the Greenway.
3. Obligations of Parties.
 - A. Land Ownership and Right-of-Entry:
 - (i) CORNELIUS has secured from The Charlotte-Mecklenburg Board of Education (“BOE”) that certain greenway easement recorded at Book 33346, Page 641 in the Mecklenburg County (N.C.) Registry (the “Registry”) with respect to Mecklenburg County Tax Parcel No. 00715232 (the “Easement”). To the extent not already granted in the Easement, CORNELIUS shall grant COUNTY an easement to construct and maintain the Greenway in accordance with the terms hereof.

- (ii) CORNELIUS owns Mecklenburg County Tax Parcel No. 00715392, which enjoys access to Avery Park Drive (a public right-of-way) via a public greenway easement created pursuant to plat recorded at Map Book 58, Page 587 in the Registry.
- (iii) County has secured, or shall secure, from DAVIDSON a greenway easement over a portion of Mecklenburg County Tax Parcel No. 00728113, which portion was (or shall be) donated by Lennar Carolinas, LLC (“Lennar”) to DAVIDSON as open space;
- (iv) County has secured, or shall secure, from DAVIDSON a greenway easement over a portion of Mecklenburg County Tax Parcel No. 00711149.
- (v) DAVIDSON has secured, or shall secure, from Lennar any easement(s) necessary to connect (a) the South Prong West Branch, Rocky River Tributary to (b) the greenway easement referenced in subsection (iii) above.
- (vi) Each of CORNELIUS and DAVIDSON warrants that it has, or will have, the legal right and/or authority to provide COUNTY all easements (or rights of entry) necessary for COUNTY to maintain the Greenway.
- (vii) Each of CORNELIUS and DAVIDSON hereby grants to COUNTY the legal right to maintain (to the extent of COUNTY’s maintenance responsibilities under this Agreement) the Greenway.
- (viii) COUNTY shall, upon five (5) days’ prior written notice from CORNELIUS and/or DAVIDSON, grant staff and/or firms contracted by CORNELIUS and/or DAVIDSON access to gates, locks, and park entrance areas related to the Greenway for purposes of maintenance and/or repair.

B. Development:

- (i) CORNELIUS shall, at its expense, complete and secure all construction drawings, specifications, costs estimates, and required permit approvals (collectively, the “Plans”) for the Greenway in accordance with generally accepted standards suitable for COUNTY’s bidding process.
- (ii) CORNELIUS shall provide COUNTY, for the latter’s review and approval, the Plans at both the seventy-five percent (75%) and one hundred percent (100%) completion thresholds thereof.
- (iii) CORNELIUS shall use best efforts to complete, and COUNTY shall use best efforts to review and approve, the Plans such that COUNTY bidding may commence during COUNTY fiscal year 2020. In the event COUNTY cannot or will not provide its approval of the Plans (within the timeframe set forth above, or otherwise), the Parties shall work together in good faith to revise the Plans so as to be reasonably acceptable to both Parties. Following COUNTY’s final approval of the Plans, any changes or modifications thereto shall be in COUNTY’s sole but reasonable discretion.
- (iv) COUNTY shall manage and provide funds for all bidding and contract administration for construction of the Greenway.

- (v) COUNTY shall provide all funds and/or capital necessary (a) for construction of the Greenway (including the furnishing of reasonable amenities related thereto [including but not limited to benches, trash cans, fencing, and signage in accordance with COUNTY standards], and (b) for management of the Greenway construction project.

C. Operations:

- (i) COUNTY shall respond to citizen calls regarding maintenance and operation concerns specific to the Greenway. Any issues reported or raised will be communicated between the Parties to ensure an appropriate response.
- (ii) Subject to subsection (i) immediately above, neither CORNELIUS nor DAVIDSON shall have any obligations related to the day-to-day operations of the Greenway.

D. Programming:

Any and all requests for recreational programming planned for the Greenway shall be submitted to COUNTY, for COUNTY's approval (not to be unreasonably withheld), not less than thirty (30) days prior to such event.

E. Maintenance:

- (i) Subject to subsection (ii) below, COUNTY hereby assumes responsibility for (and shall be permitted to contract for) all routine maintenance, repair and upkeep of the Greenway and related improvements (including the trail, boardwalks, site furnishings, amenities, signage and improved shoulder areas), in accordance with the standards (i) set forth at Exhibit B attached hereto, and (ii) consistent with those for other greenways owned or maintained by COUNTY.
- (ii) Intentionally omitted.
- (iii) COUNTY is not responsible for maintaining any improvements on the Greenway installed and owned by either CORNELIUS or DAVIDSON (any substantial improvements to be approved by County prior to installation), or upgrading such equipment to meet local, state, and federal requirements.
- (iv) CORNELIUS and/or DAVIDSON shall be responsible for addressing and resolving any encroachment or similar issues involving or raised by landowners adjacent to the Greenway.

F. Capital Improvement Projects and Major Repairs:

- (i) The Parties will consult one another to determine levels of financial participation in any future capital projects or improvements planned for the Greenway.
- (ii) Intentionally omitted.
- (iii) In the event of casualty or force majeure resulting in significant damage to the Greenway, the Parties will cooperate in good faith to repair any such damage.

G. Fees:

Neither Party shall charge fees for daily use of the Greenway (excluding any special programming events approved by County, any fees for which shall be determined in accordance with County's schedule of fees for similar events). If either CORNELIUS and/or DAVIDSON has an officially sanctioned event or program, then CORNELIUS and/or DAVIDSON may request a fee waiver in accordance with the most recently adopted Mecklenburg County Park & Recreation Fee Waiver Guidelines.

H. Utilities:

Each Party shall pay for any future lighting (including monthly electricity charges) desired by such Party with respect to the Greenway. COUNTY shall be responsible for payment of any stormwater fees associated with or assessed upon the Greenway.

I. Security:

COUNTY will provide park ranger patrol for the Greenway on a schedule consistent with standards for similar greenways owned or maintained by COUNTY. The CORNELIUS and DAVIDSON police departments will assist as reasonably requested by COUNTY with foot, bicycle and vehicle patrols.

J. Signage:

The Parties will cooperate to incorporate branding needs specific to each Party within the standard COUNTY park and recreation wayfinding and signage system.

4. Meetings. The Parties agree to (i) take such other and further steps as may be reasonably necessary to accomplish the purposes of this Agreement, and (ii) meet as needed to (a) review each Party's performance (and/or improve delivery of the services required of each) hereunder, (b) conduct inspections of the Greenway, (c) assess then-current standards of maintenance and operations for the Greenway, and (d) consider capital improvements for the Greenway. Furthermore, CORNELIUS and/or DAVIDSON shall promptly relay to COUNTY any concerns with respect to items (i-ii) in the preceding sentence, and COUNTY shall promptly address any such concerns in a manner consistent with COUNTY's standards for other greenways in its system.
5. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning development, maintenance and operation of the Greenway. There are no other agreements (either oral or written) with respect to the subject matter of this Agreement, which may not be altered, amended, or terminated except by a writing signed by the Parties.
6. Force Majeure. Neither Party shall be deemed in default with respect to any of the terms, covenants and conditions of this Agreement if such Party fails to perform and its failure is due (in whole or in part) to: any strike, lockout, labor trouble (whether legal or illegal, and except for such events which are caused by that party's own employees), civil disorder, inability to procure material, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, civil strife, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees), or any other cause beyond the commercially reasonable control of the non-performing party.

7. Indemnification.

- (i) To the extent permitted by applicable law, each of CORNELIUS and DAVIDSON agrees to indemnify, defend and save harmless COUNTY (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with CORNELIUS or DAVIDSON's (as applicable) operations, installations, plantings, construction or its services hereunder. Each of CORNELIUS and DAVIDSON's duty to indemnify COUNTY shall survive the expiration or other termination of this Agreement.
- (ii) To the extent permitted by applicable law, COUNTY agrees to indemnify, defend and save harmless CORNELIUS and DAVIDSON (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with COUNTY's operations, installations, plantings, construction or its services hereunder. COUNTY's duty to indemnify CORNELIUS and DAVIDSON shall survive the expiration or other termination of this Agreement.

8. Assignment. No Party hereto shall assign its rights or obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

CORNELIUS:

TOWN OF CORNELIUS,
a municipal corporation organized
under the laws of the State of North Carolina

By: _____
Name: _____
Title: _____

DAVIDSON:

TOWN OF DAVIDSON,
a municipal corporation organized
under the laws of the State of North Carolina

By: _____
Name: _____
Title: _____

COUNTY:

MECKLENBURG COUNTY,
a political subdivision of the State of North Carolina

By: _____
Name: _____
Title: _____

Approved as to Form:

David C. Dwyer, Esq.
Ruff, Bond, Cobb, Wade & Bethune LLP
Counsel for Mecklenburg County

Exhibit A

[Greenway Depiction]

Exhibit B

Mecklenburg County Standards for Greenway Operations and Maintenance

Mowing

1. Maintain open corridor of trail and 3ft mowed areas either side of trail
2. Bush hog from mowed area at least 8ft up to tree line. – 1-2 times a year or as needed
3. Weed eat and brush cut any growth that falls or droops into 3ft mowed area along the trail

Brush Cutting

1. As needed to maintain sight visibility; safety around curves
2. Drainage ditches and swales, as needed
3. Ditch slopes and bottoms
4. Removal of heavy vegetation, within guidelines for water quality

Pruning

1. Remove tree limbs that encroach into trail
2. Lift tree branches in bush hog areas as needed to permit mowing and safe passage
3. Trail clearance heights should be 10 to 12 feet, maintained to mowed areas

Drains / Erosion

1. Keep pipes clear of debris

Leaf Removal

1. Blow leaves and debris material from trail surface and drain areas – Seasonal, as needed

Weed Control / Pesticides

1. Application of vegetative pesticides
2. General non-select pesticide
3. Chemical control of vegetation along designated trail edges
4. Chemical control of vegetation over rip rap, pipe heads and drain ways -- follow water quality guidelines. Use of chemicals will be minimized wherever possible. Products will be applied in accordance with current laws and industry standards.

Fallen trees / Tree work

1. Remove when encountered while working
2. Remove trees that present safety concern for greenway trail user
3. Contract removal as necessary

Tunnel Cleaning

1. Remove silt and sediment within 48 hours after any flood event
2. Contract tunnel cleaning as necessary

Bridge/Boardwalk Repair

1. Repair/replace any loose or broken boards or rails

Trail repair / Patch work

1. Maintain trails as needed
2. Repair potholes, cracks, tree roots in trail surface
3. Install bollards where needed

Signage

1. Install signs as needed.
2. Replace signs as needed.
3. Clean signs as needed.

Lighting

1. Replace bulbs/lenses
2. Repair as needed to keep functional

Greenway requests for service

1. Perform site visits to determine necessary action
2. Respond to homeowners concerns with direct phone call and suggested action

Trash removal – 1-2 times a week, based on volume